IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE EIGHTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE N.V. RAMANA

WRIT PETITION NO : 22702 of 2004

Between:

1 Dasari Jayanth Kumar S/o Sambasiva Rao
R/o D. NO. 3-14-78, Nehru Road, Tenali Guntur District
2 Dasari Radhakrishna Murthy S/o Sambasiva Rao
R/o D. NO. 3-14-78, Nehru Road, Tenali Guntur District

..... PETITIONER(S)

AND

1 The Municipal Commissioner, Tenali Municipaltiy, Guntur District
2 The Vice-Chairman, Vijayawada, Guntur, Tenali & Mangalagiri Urban Developmetn Authority, Vijayawada, Krishna District

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, order or direction, more particularly one in the nature of Writ of Mandamus declaring the action of the Respondents in demolishing the House property belonged to the petitioner bearing D. No. 3-14-78, Nehru Road, Tenali Guntur District, without issuing any notice and without conducting any enquiry is arbitrary, unreasonable and consequently direct the Respondents not to interfere with the peaceful possession and enjoyment of the petitioners house property bearing D. NO. 3-14-78, Nehru Road, Tenali Guntur District without following due process of law and to pass such other and further orders as this Hon'ble Court may deem fit and proper

Counsel for the Petitioner:MR.G.TUHIN KUMAR

Counsel for the Respondent No.1: MR.DANTU.SRINIVAS

The Court at the stage of admission made the following :

ORAL ORDER

Learned counsel for the petitioners as well as the learned Standing Counsel for the respondent-Municipality represent that the writ petition may be disposed of in the light of the direction issued by a Division Bench of this court in. WP No.21198/97 dt. 3-2-1998.

The petitioners, who are the owners of house bearing Municipal door No.3-14-78, Nehru Road, Tenali, Guntur District, filed the present writ petition apprehending highhanded and illegal action of the respondents in trying to demolish their house under the garb of widening of the road, which is in violation of Art.300-A of the Constitution.

Several writ petitions complaining against the arbitrary actions of the various Corporations, Municipalities and Panchayats in proceeding with the widening of the roads without due process of law were came up for consideration before this court and ultimately a Division Bench of this court disposed of the WP No.21198/97 dt. 3-2-1998 with the following directions:

1. Where a property is required for public purpose viz., widening of roads or for any other purpose, the authorities straightaway cannot take law into their hands and jump into the premises, dispossess or evict the occupants or demolish the property.

2. If the authorities concerned want to take action for eviction/dispossession of the occupants for demolition, they shall issue 60 days prior notice notifying as to the nature of the property, the property to whom it belongs and the

proposed action calling for explanation/objections, if any from the occupants. On receipt of such objections, if there is any objection as to the ownership of the property, the authorities should determine the extent of encroachment or unauthorised occupation and also determine whether the property in question belongs to Government, any other local self Government or authority or the occupants and pass appropriate orders within three months from the date of receipt of the objections, after affording an opportunity of being heard to the occupants.

3. In case where demolition of private property has already been made, the authorities shall determine the damages on the basis of the assessment to be made by the Engineer of the Roads and Buildings Department and disburse the amount of damages quantified forthwith.

4. If the demolition is in respect of local bodies/Government property, the question of damages does not arise. In such an event, the occupant shall be entitled to remove the material used for the construction.

5. In case of demolition of private property, the authorities concerned shall determine the loss caused to the occupants on the basis of the assessment to be made by the Engineer of R & B Department and on such assessment of damages, the concerned authorities shall take appropriate steps to disburse the amount quantified forthwith.

6. If there is any claim for grant/assignment of the property, the concerned authorities shall consider the same in accordance with law taking into consideration the eligibility and the entitlement of occupants, after making enquiry and till such claim is decided, there shall be status quo obtaining as on today regarding the structures.

In view of the same, whenever the respondents are proceeding with the widening of the roads, they are bound to proceed with the same by following due

process of law as contemplated under Municipalities Act as well as Land Acquisition Act, 1894 or by way of private negotiations. Following the guidelines issued by a Division of this court, this writ petition is disposed of with a direction to the respondents not to demolish the petitioners house bearing Municipal door No. 3-14-78, Nehru Road, Tenali, Guntur District, without either following due process of law or private negotiations. However, this order will not preclude the respondent-Municipality to negotiate with the petitioners and if the petitioners agree for such road widening and give consent to give the property in question, it is open for the respondents to acquire the same in accordance with law. Till such time, the respondents shall not demolish the structures belonging to the petitioners. No costs.

8.12.2004

Note:

CC by today.

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1 The Municipal Commissioner, Tenali Municipaltiy, Guntur District
2 The Vice-Chairman, Vijayawada, Guntur, Tenali & Mangalagiri Urban Developmetn Authority, Vijayawada, Krishna District

3. 2 CD copies

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THE HONOURABLE SRI JUSTICE

A.GOPAL REDDY

W.P.No.868 of 2003

Oral Order:

The petitioner-Mosque filed this writ petition aggrieved by the action of the respondents in purporting to take 10 feet inside the constructed area of the building situated on the southern side of the mosque and also to encroach 10 feet of mosque' space through demolishing the premises situated at D.Nos.11-62-132 to 153, Ward No.11A, Canal Road, Vijayawada.

It is contended by the petitioner that it owns shopping complex and deriving income by leasing out the shops. While so, the officials of the respondent-Corporation under the garb of widening of the road made markings on the Jumma Masjid Wakf. Immediately the petitioner made a representation to the Commissioner, Municipal Corporation of Vijayawada—2nd respondent on 07-01-2003 informing that the

Management of the Wakf is under the Committee constituted pursuant to the Court order, and without obtaining necessary consent from the Wakf Board and without following due procedure established under law no demolition can be undertaken. Apprehending that the respondent-Corporation without following due procedure may demolish the structures, the petitioner moved the present writ petition by way of lunch motion.

The learned Standing Counsel for the respondent-Corporation, on instructions, submits that the markings were not undertaken and basing on the representation made by the Committee of the petitioner-Mosque necessary negotiations have taken place for which the Committee agreed to confer the affected portion. It is only if the Committee declines to agree for widening of the road, necessary procedure contemplated under the Municipalities Act will be followed.

When similar road widening was taken up by some of the Municipal Corporations and Local Authorities, a Division Bench of this Court in ***USHODAYA PUBLICATIONS, HYDERABAD v. COMMISSIONER, M.C.H.*** categorically held that for the purpose of road widening, the Municipal Corporation cannot forcibly take possession of the property nor dismantle the shops but acquire the property under the Land Acquisition Act.

Following the said judgment, this writ petition is also disposed of directing the respondents not to demolish the shops in the premises in question without following the procedure contemplated under Land Acquisition Act.

It is made clear that if the petitioner agrees for such road widening and gives consent, it is open to the Corporation to enter into an agreement and take possession of the property. If the Corporation fails to secure the consent, it is always open to them to acquire the land after following the procedure contemplated under the Land Acquisition Act. Till the procedure under the Land Acquisition Act is complied with, the Corporation is restrained from demolishing the premises in question.

10-01-2003

Murthy

THE HONOURABLE SRI JUSTICE

A.GOPAL REDDY

W.P.No.3066 of 2003

ORAL ORDER

Learned counsel for the petitioner as well as the learned Standing Counsel for the respondent-Municipal Corporation represent that the writ petition may be disposed of in the light of the direction issued by a Division Bench of this court in W.P.No.21198 of 1997 dated 03-02-1998.

Rule Nisi.

The petitioners who are all owners of houses bearing Municipal door Nos.9-25-56; 9-25-13; 9-25-70; 9-25-11; 9-25-73; 9-25-62; 9-25-78; 9-25-77; 9-25-16; 9-25-17A; 9-25-18; 9-25-63 and 9-25-22 filed the present writ petition apprehending highhanded and illegal action of the respondents in trying to demolish their houses under the garb of widening of the road, which is in violation of Art.300-A of the Constitution.

Several writ petitions complaining against the arbitrary actions of the various Corporations, Municipalities and Panchayats in proceeding with the widening of the roads without due process of law were came up for consideration before this Court and ultimately a Division Bench of this Court disposed of the WP No.21198 of 1997 dated 03-02-1998 with the following directions:

7. Whether a property is required for public purpose viz., widening of roads or for any other purpose, the authorities straightaway cannot take law into their hands and jump into the premises, dispossess or evict the occupants or demolish the property.

8. If the authorities concerned want to take action for eviction/dispossession of the occupants or demolition, they shall issue 60 days prior notice notifying as to the nature of the property to which it belongs and the proposed action calling for explanation/objections, if any from the occupants. On receipt of such objections, if there is any objection as to the ownership of the property, the authorities should determine the extent of encroachment or unauthorised occupation and also determine whether the property in question belongs to Government, any other local self Government or authority or the occupants and pass appropriate orders within three months from the date of receipt of the objections, after affording an opportunity of being heard to the occupants.

9. In case where demolition of private property has already been made, he authorities shall determine the damages on the basis of the assessment to be made by the Engineer of the Roads and Buildings Department and disburse the amount of damages quantified forthwith.

10. If the demolition is in respect of local bodies/Government

property, the question of damages does notaries. In such an event, the occupant shall be entitled to remove the material used for the construction.

11. In case of demolition of private property, the authorities concerned shall determine the loss caused to the occupants on the basis of the assessment to be made by the Engineer of R & B Department and on such assessment of damages, the concerned authorities shall take appropriate steps to disburse the amount quantified forthwith.

12. If there is any claim for grant/assessment of the property, the concerned authorities shall consider the same in accordance with law taking into consideration the eligibility and the entitlement of occupants, after making enquiry and till such claim is decided, there shall be status quo obtaining as on today regarding the structures.

In view of the same, whenever the respondent-Corporation is proceeding with the widening of the roads, they are bound to proceed the same by following due process of law as contemplated under Municipalities Act as well as Land Acquisition Act, 1894 or by way of private negotiations.

Following the guidelines issued by a Division of this court, this writ petition is disposed of with a direction to the respondent not to demolish the petitioners' houses bearing Municipal Door Nos. 9-25-56; 9-25-13; 9-25-70; 9-25-11; 9-25-73; 9-25-62; 9-25-78; 9-25-77; 9-25-16; 9-25-17A; 9-25-18; 9-25-63 and 9-25-22 without either following due process of law or private negotiations. However, this order will not preclude the respondent-Corporation to negotiate with the petitioners and if the petitioners agrees for such road widening and gives consent to give the property in question, it is open for the respondent-Corporation to acquire the same in accordance with law. No costs.

A.GOPAL REDDY,J

DT.20-02-2003

Murthy